IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4933 OF 1993

Smt.Ila Govind Thakore,)
presently residing at Flat No.31,)
Churchgate Mansion 'A' Road,)
Churchgate, Bombay 400 020.).. Petitioner.

Vs.

1. Alfred Madhavlal David,)
an Indian Inhabitant,)
residing at Apartment No.31-A,)
B-4 Khira Nagar,)
Swami Vivekanand Road,)
Santacruz (W), Bombay 400 054.)

2. Samtax Tax & Finance Services)
Private Ltd.)

3. Manohar Alamchand Bhagnari,)

4. Mrs.Pushpa Shantilal Mehta,)

5. Shantilal J. Mehta, No.6,)
Khermani Building, 4th Floor,)
Sir Phirozshah Mehta Road,)
Bombay 400 001.)

6. M/s.Minoocheri Farjadi & Co.,)

7. Mrs.Banoo Merwani Farjadi,)

8. Mrs.Daulat Jamshed Minoochari,)

9. Mrs.Keshwan Merwan Minoocheri,)
Kermani Building,)
Bombay 400 001.).. Respondents

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None present for the petitioner and the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14TH NOVEMBER, 2005.

ORAL JUDGMENT :

1. None present for the parties. Perused the records.

2. The petitioner challenges the order passed by the lower appellate court on 27th October, 1993 in Appeal No.7 of 1990 whereby the appeal was dismissed as well as the order passed by the trial Court on 22nd November, 1990 whereby the application for temporary injunction and appointment of Receiver was dismissed. The challenge is on the ground that the Courts below did not properly appreciate the materials on record while arriving at the finding about absence of prima facie case for grant of relief.

3. Undisputed facts revealed from the records are that the petitioner was tenant in respect of the office premises on the 4th floor of Kermani building situated at Sir P.M.Road, Fort, Mumbai, and in the year 1984, on account of some financial difficulties faced in the business, she was under tension and in the process had executed power of attorney in favour of her brother-in-law, who is the respondent No.1 herein. Exercising the powers given to him under the

said power of attorney executed by the petitioner, the tenancy rights in respect of the suit premises were surrendered in favour of the respondent Nos.6 to 9 and subsequently the respondent Nos.3 to 5 were inducted in the premises. Attempt on the part of the petitioner and her son to enter the premises in December, 1987 proved futile. Therefore, the petitioner filed the suit and during the pendency of the said suit, she filed an application for temporary injunction seeking various reliefs including the relief of appointment of Receiver. The trial Court, after hearing the parties, dismissed the said application by the impugned order which was confirmed by the lower appellate court.

4. Though various grounds are enumerated in the memo of petition, in substance, they relate to the grievance of the petitioner that the Courts below have failed to appreciate the materials placed on record in proper perspective while arriving at the finding about absence of prima facie case for grant of relief prayed for. Merely because the Courts below did not believe the case putforth by the petitioner or did not appreciate the materials placed on record in the manner the petitioner desires to be appreciated or that the appreciation thereof would lead to a

different conclusion, that could not be a ground for interference in writ jurisdiction in exercise of powers under Article 227 of the Constitution of India. Once it is not in dispute that all the materials which were placed before the Courts below were considered and rejected for not disclosing prima facie case in favour of the petitioner, no interference would be justified in writ jurisdiction under Article 227 of the Constitution of India in the judgment passed by the trial Court rejecting the application for temporary injunction and confirming the same by the lower appellate Court. The petition nowhere discloses any illegality committed by the Courts below in exercise of jurisdiction in relation to the consideration of claim for injunctive relief by the petitioner. There is neither refusal on the part of the Court below to exercise its jurisdiction nor there is an excess of exercise of jurisdiction while rejecting the application for temporary injunction.

5. Once it is shown by the petitioner herself that since 1984, the dealings in relation to the suit premises were entrusted to the respondent No.1 by execution of power of attorney and whatever acts which have been done by the respondent No.1 were in exercise of power given to him under the said power of

attorney, unless on merits the petitioner is able to establish that there has been misuse of powers and/or contravention of the terms of power of attorney granted to the respondent No.1 and that too after a lapse of period of six years from the date of execution of such power of attorney, no fault can be found with the Courts below refusing injunctive relief or a relief of appointment of Receiver in relation to the suit premises. Undisputedly, there was no attempt on the part of the petitioner to enter the suit premises prior to December, 1987. The suit is filed in the year 1990. In these circumstances, therefore, there is no case for interference in the impugned orders.

6. In the result, therefore, the petition fails and is hereby dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

(R.M.S.KHANDEPARKAR, J)